THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.4510 of 2005

Date of Decision: 17 - 7 - 2006

Jit Kumar etc. **.....Petitioners**

v.

Inder Mohan **.....Respondent**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.G.S.Sandhawalia, Advocate
for the petitioners.

Naresh Prabhakar, Advocate
for the respondent.

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P.S.PATWALIA, J.

The present revision petition has been filed against order dated 7.5.2005 vide which the learned Civil Judge (Sr.Division), Kapurthala dismissed the objections filed by the petitioners in an application under Order XXXIV Rule 8 CPC for grant of final decree for redemption of the mortgaged shop in terms of preliminary decree dated 31.1.1996.

At the time of arguments, it was argued before me that the compromise entered into between Inder Mohan and Kamal Kishore could not defeat the rights of the objectors. I am afraid there is no merit in this contention. A second appeal being R.S.A.No.4236 of 2001 filed in this Court against the preliminary decree was disposed of on 24.4.2003 in terms of the aforementioned compromise. Thereafter the objectors, petitioners herein, filed an application for recalling of the order taking the plea that the compromise effected was not binding

on their rights. On their application, the order in the Regular Second Appeal was recalled and the appeal was ordered to be heard on merits. When the appeal was heard on merits, after noting that as against appellants 1 and 2, the appeal could not survive on the basis of compromise, the rights of the remaining appellants who were the objectors were discussed as hereunder:-

> *"As referred to above, appellant Nos.1 and 2 in the present appeal, who were defendant Nos.2 and 5 in the trial Court, on the one hand and respondent No.1, Inder Mohan, who was the plaintiff in the trial Court, had entered into a compromise during the pendency of the appeal, vide compromise dated 2.4.2004 and by virtue of the said compromise, appellant Nos.1 and 2 (defendant Nos.2 and 5) have already sought the dismissal of the appeal qua them as withdrawn and as noticed above, the present appeal qua appellant Nos.1 and 2 (defendant Nos.2 and 5) has already been dismissed as withdrawn. Once the present appeal, filed on behalf of defendant Nos.2 and 5 has been dismissed as withdrawn, it would be clear that the civil Court decree against defendant Nos.2 and 5 has become final. So far as appellant Nos.3 to 9 in the present appeal are concerned, they are the LRs of defendant No.8 in the trial Court. So far as appellant Nos.3 to 9 are concerned, they have no independent right in the suit property. On the other hand, they are claiming their right in the suit property as tenants from the other contesting defendants who have either not challenged the decree, passed by the Courts below or had accepted the same by getting the appeal dismissed as withdrawn by virtue of the compromise with plaintiff-respondent No.1. Thus, so far as the merits of the case regarding the mortgage and its redemption etc, are concerned, the same have become final and cannot be gone into by this Court in the*

present appeal on behalf of appellant Nos.3 to 9 (LRs of defendant No.8).

However, the claim of appellant Nos.3 to 9 (LRs of defendant No.8) regarding these appellants being the tenants in the suit property prior to its mortgage, it certainly cannot be gone into by this Court in the present appeal even though the appellant Nos.1 and 2 (defendant Nos.2 and 5) have withdrawn their appeal by virtue of the compromise with respondent No.1. However, in my opinion, the claim of appellant Nos.3 to 9 that they are the tenants in the suit property prior to its mortgage, has rightly been discarded by the Courts below since these appellants had miserably failed to produce any material on the record to show that in fact they were in possession of the suit property as tenants prior to its mortgage. No documentary evidence whatsoever was produced on the record to support the plea that they were in possession of the suit property as tenants prior to the mortgage. On the other hand, only oral evidence was produced in this regard. Both the Courts below, after considering the oral evidence available on the record, found it as a fact that appellant Nos.3 to 9 (LRs of defendant No.8) were not proved to be tenants in the suit property prior to its mortgage. On the other hand, they were found to be in possession of the suit property as tenants after its mortgage. Under these circumstances, the Courts below passed the decree for possession in favour of the plaintiffs while decreeing the suit of the plaintiffs for possession on redemption of the mortgage, on payment of the mortgage money and the interest thereon. It is well settled that a tenant of the mortgagee has to go along with the mortgagee on redemption of the mortgage, in respect of the urban immovable property. In fact, the learned

counsel for appellant Nos.3 to 9 could not point out any material from the record to show that the findings of the Courts below in this regard are contrary to law or are not based on the evidence led by the parties. This is especially so when nothing has come on the record to show that any material piece of evidence has been misread or ignored by the Courts below while coming to these findings. Furthermore, no question of law muchless substantial question of law arises for determination in this appeal on behalf of appellant Nos.3 to 9, keeping in view that appellant Nos.1 and 2 have already entered into a compromise with plaintiff-respondent No.1 and the pleas which were available to appellant Nos.1 and 2, would not be available to appellant Nos.3 to 9 as they are in possession of the suit property as tenants and not otherwise.

In view of the above, finding no merit in the present appeal, the same is hereby dismissed."

In view of these categoric findings, the trial Court rightly dismissed the objections, as discussed hereinabove, raised by the plaintiffs.

Even on the ground of limitation, I agree with the findings recorded by the trial Court that the application for final decree was filed on 20.9.2004 i.e. 18 days after the regular second appeal had been dismissed by the High Court on 2.9.2004. The application was thus within limitation.

Having gone through the orders of the trial Court dismissing the objections, I find no merit in this revision petition and the same is therefore dismissed.

(P.S.PATWALIA)
JUDGE

July 17, 2006.

RC